

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 24.2-802 and 24.2-803 of the Code of Virginia, relating to election recounts and contests.

[H 1337]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-802 and 24.2-803 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-802. Procedure for recount.

A. Within seven days of the filing of the petition, the chief judge of the circuit court shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to review by the full court. As part of the preliminary hearing, the chief judge may permit the petitioner and his counsel, together with each other party and his counsel and at least two members of the electoral board and the custodians, to examine any mechanical or direct electronic voting device of the type that prints returns when the print-out sheets are not clearly legible. *The petitioner and his counsel and each other party and their counsel under supervision of the electoral board and its agents shall also have access to pollbooks and other materials used in the election for examination purposes. The chief judge during the preliminary hearing shall review all security measures taken for all ballots and voting devices and direct, as he deems necessary, all appropriate measures to ensure proper security to conduct the recount.*

The chief judge, subject to review by the full court, may set the place or places for the recount and may order the delivery of election materials to a central location and the transportation of voting devices to a central location in each county or city under appropriate safeguards.

After the full court is appointed under § 24.2-801, it shall call a hearing at which all motions shall be disposed of and the rules of procedure shall be fixed finally. The court shall call for the advice and cooperation of the State Board or any local electoral board, as appropriate, and such boards shall have the duty and authority to assist the court. *The court shall fix procedures that shall provide for the accurate determination of votes in the election. Commencing upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of an election.*

B. The court shall permit each candidate, or petitioner and governing body or chief executive officer, to select an equal number of the officers of election to be recount officials and to count ballots, or in the case of mechanical or direct electronic voting devices to redetermine the vote. The number shall be fixed by the court and be sufficient to conduct the recount within a reasonable period. The court may permit each party to the recount to submit a list of alternate officials in the number the court directs. There shall be at least one team of recount officials to recount paper ballots and to redetermine the vote cast on mechanical or direct electronic devices of the type that prints returns for the election district at large in which the recount is being held. There shall be at least one team from each locality in the election district to redetermine the vote on other types of mechanical voting devices. There shall be at least one team from each locality using electronic counting devices to insert the ballots into one or more counting devices. The counting devices shall be programmed to count only votes cast for parties to the recount or for or against the question in a referendum recount. Each team shall be composed of one representative of each party.

The court may provide that if, at the time of the recount, any recount official fails to appear, the remaining recount officials present shall appoint substitute recount officials who shall possess the same qualifications as the recount officials for whom they substitute. The court may select pairs of recount coordinators to serve for each county or city in the election district who shall be members of the county or city electoral board and represent different political parties. The court shall have authority to summon such officials and coordinators. On request of a party to the recount, the court shall allow each party to appoint one representative observer for each team of recount officials. The expenses of its representatives shall be borne by each party.

C. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used, any or all ballots cast at the election, and absentee ballots sought to be cast but ruled invalid or may assume supervision thereof through the recount coordinators and officials. *The court shall permit the parties, recount officials, and counsel to examine all ballots cast in the election, including paper ballots, ballots cast on mechanical voting devices, ballots counted on electronic counting devices, and all absentee ballots sought to be cast but ruled invalid, for the purpose of ascertaining the number of*

57 *ballots cast for each of the party candidates or for or against the question.* At the conclusion of the
 58 recount of each precinct, the recount officials shall write down (i) in the case of mechanical or direct
 59 electronic voting devices the redetermination of the vote and (ii) the number of valid ballots cast, this
 60 number being obtained from the ballots cast in the precinct, or from the ballots cast as shown on the
 61 statement of results if the ballots cannot be found, for each of the two candidates or for and against the
 62 question. They shall submit the ballots or the statement of results used, as to the validity of which
 63 questions exist, to the court. The written statement of any one recount official challenging a ballot shall
 64 be sufficient to require its submission to the court. ~~For purposes of redetermining the vote cast by any~~
 65 ~~mechanical or direct electronic voting device that prints returns, the printed return sheets shall be~~
 66 ~~sufficient evidence of the count.~~ If, on all mechanical or direct electronic voting devices, the number of
 67 persons voting in the election, or the number of votes cast for the office or on the question, totals more
 68 than the number of names on the pollbooks of persons voting on the devices, the figures recorded by
 69 the devices shall be accepted as correct.

70 At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned
 71 ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and
 72 votes. ~~By an appropriate order~~ *After determining all matters pertaining to the recount and*
 73 *redetermination of the vote as raised by the parties,* the court shall certify to the State Board and the
 74 electoral board or boards (i) the vote for each party to the recount and declare the person who received
 75 the higher number of votes to be nominated or elected, as appropriate, or (ii) the votes for and against
 76 the question and declare the outcome of the referendum.

77 D. Costs of the recount shall be assessed against the counties and cities comprising the election
 78 district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a
 79 recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated
 80 or elected and the candidate petitioning for the recount a difference of not more than one-half of one
 81 percent of the total vote cast for the two such candidates as determined by the State Board or electoral
 82 board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate
 83 petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate
 84 petitions for a recount, the court may assess costs in an equitable manner between the counties and
 85 cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date
 86 shall be assessed against any candidate or petitioner who defaults or withdraws his petition.

87 E. The court shall determine the costs of the recount subject to the following limitations: (i) no per
 88 diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of
 89 election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the
 90 county or city for service on election day; and (iii) per diem payments to alternates shall be allowed
 91 only if they serve.

92 F. Any petitioner who may be assessed with costs under subsection D of this section shall post a
 93 bond with surety with the court in the amount of ten dollars per precinct in the area subject to recount.
 94 If the petitioner wins the recount, the bond shall not be forfeit. If the petitioner loses the recount, the
 95 bond shall be forfeit only to the extent of the assessed costs. If the assessed costs exceed the bond, he
 96 shall be liable for such excess.

97 G. The recount proceeding shall be final and not subject to appeal.

98 § 24.2-803. Contest of election to General Assembly.

99 A. This section applies to any general or special election of members to the General Assembly.

100 B. A contest of the election of any member to the General Assembly may be initiated by an
 101 unsuccessful candidate in the election, referred to hereafter as the contestant.

102 To initiate a contest, the contestant shall give written notice, in the manner provided in subsection D,
 103 of his intent to contest the election to the person or persons apparently elected, referred to hereafter as
 104 the contestee, and to the Clerk of the House of Delegates if he is contesting a House election or of the
 105 Senate if he is contesting a Senate election, ~~within twenty~~ *no later than thirty* days following the date of
 106 the election *or three days after the conclusion of a recount, whichever is later.*

107 The notice shall state the grounds on which the contestant intends to contest the election. The
 108 grounds shall include (i) objections to the eligibility of the contestee based on specific allegations, (ii)
 109 objections to the conduct or results of the election accompanied by specific allegations which, if proven
 110 true, would have a probable impact on the outcome of the election, or (iii) both.

111 The notice shall state that an answer by the contestee must be filed with the clerk of the appropriate
 112 house within ten days following service of the notice. The contestant shall sign and verify the notice by
 113 his oath or affirmation.

114 C. Within ten days after service of the contestant's notice on the contestee, the contestee shall file
 115 with the clerk of the appropriate house a written answer. His answer shall admit or deny the allegations
 116 on which the contestant relies, or state that he has no knowledge or information concerning an allegation
 117 which shall be deemed denial, and state any other defenses, in law or fact, on which he relies. The

118 contestee shall sign and verify his answer by his oath or affirmation.

119 D. The notice of intent to contest shall be filed by the contestant with the clerk of the appropriate
120 house and copies thereof served by the contestant as provided under § 8.01-296 on each contestee. The
121 answer, petition, and any reply and copies thereof shall be filed with the appropriate clerk, and copies
122 shall be served on the opposing party or his counsel, if any, in the manner prescribed by Rule 1:12 of
123 the Rules of the Supreme Court of Virginia.

124 After service of the notice of intent, any party, after reasonable notice to the other party or parties,
125 shall be authorized to take depositions to sustain or invalidate the election. The contestant shall complete
126 the taking of depositions to submit with his petition at any time within ~~thirty~~ twenty days following the
127 date of the *notice of intent to contest the election*, and the contestee shall complete the taking of his
128 depositions within ~~forty-five~~ thirty days following the date of the *notice of intent to contest the election*.
129 By written stipulation of the parties, the testimony of any witness may be filed in the form of an
130 affidavit by the witness within the same time limitations prescribed for the taking of depositions.

131 Subpoenas for witnesses shall be issued by the clerk of the circuit court of the county or city in
132 which the contestee resides on the application of either party. Witnesses shall be entitled to the same
133 allowances and privileges, and be subject to the same penalties, as witnesses summoned to attend the
134 courts.

135 Every deposition shall be taken before a person authorized by law to administer oaths, who shall
136 certify and seal the deposition in the same manner as in judicial civil proceedings, and file the same
137 with the clerk of the appropriate house.

138 E. A written petition shall be filed by the contestant with the clerk of the appropriate house (i)
139 within ~~two~~ ten days following the ~~second Wednesday in January~~ *filing of the notice of intent to contest*
140 *the election* if the contested election was held at a November general election and (ii) within ~~twenty~~ ten
141 days following the date of the *filing of the notice of intent to contest the election* or within two days
142 following the commencement of the next session of the General Assembly, whichever is later, if the
143 election was held on a different date. The contestee may file a written reply to the petition within five
144 days following its service on him.

145 No affidavit may be made a part of, or filed in support of, a petition or reply thereto unless the
146 affidavit has previously been filed with the clerk of the appropriate house, pursuant to the written
147 stipulation of the parties or their counsel, on or before the date established by subsection D for the
148 completion of the taking of depositions by the proponent of the affidavit.

149 F. If the election was held during a regular session of the General Assembly, the times for filing the
150 notice of intent to contest, the answer, petition, and reply and for taking depositions and affidavits shall
151 be set by the Committee on Privileges and Elections of the appropriate house. The Committee may
152 consider the contestant's and contestee's recommendations for the procedural schedule.

153 G. The clerk shall refer the notice, answer, petition, reply, depositions, and affidavits to the
154 Committee on Privileges and Elections, which documents shall constitute the record in the contest.

155 Unless another committee has been designated by the rules of the house to hear contest matters, the
156 Committee on Privileges and Elections shall hear the contest and conduct such investigation as has been
157 directed by resolution of its house. It shall report its findings and recommendations to the house for its
158 action.

159 H. The house, in its judgment, may find for the contestant and declare him elected, find for the
160 contestee and confirm his election, or declare the election void and order a writ of election as in other
161 cases of vacancy. If the house finds a tie vote has occurred, it shall direct a determination by lot in
162 accordance with § 24.2-674, but no right to a recount shall be permitted. If the house finds, by
163 two-thirds vote of the house that the contestant has prosecuted the election contest in bad faith, the
164 house may order the contestant to pay to the contestee a sum that is not more than the contestee's actual
165 costs of defending against the contest, including, but not limited to, reasonable attorneys' fees, expert
166 witnesses' fees, and such costs as would be taxable in an action at law.